

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5028 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ONVARKHAN RAHIMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR G.T.Parikh for Mr. SB NANAVATI for Petitioner
MR V.B.Gharania,A.G.P. for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/02/99

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondents to treat the period of suspension of the petitioner as on duty on both the occasions, pay arrears of his salary and allowances for the period during his suspension forthwith, and to release all his increments accrued till today. The petitioner was recruited as an unarmed police

constable in the year 1972. At the relevant time, he was serving as an unarmed police constable in Special Branch in the office of the Commissioner of Police, Ahmedabad. The petitioner was involved in two criminal cases, firstly Crime No.152 of 1979 for the offences punishable under sections 302, 397, 411, 414 and 120-B of the Indian Penal Code alongwith others and the petitioner was prosecuted for the offences and he was acquitted by the Sessions Court, Ahmedabad city vide judgment and order dated 13th March, 1979. The petitioner was again involved in Criminal case no.296 of 1979 for the offences punishable under sections 379 of the Indian Penal Code and was tried by the Court of the Metropolitan Magistrate, court no.2, Ahmedabad city and the petitioner was again acquitted by an order dated 18.8.80. The petitioner was suspended by an order dated 30.3.1979 and he was reinstated on duty on 23.11.79 and on the very same day, the petitioner was again placed under suspension for the involvement in the second offence and that continued till 8th June, 1981, when he was reinstated in service by the order of the Deputy Commissioner of Police, Special Branch, Ahmedabad.

2. The contention of the learned counsel for the petitioner is that the petitioner was involved in two criminal cases and after the trial, he was acquitted from all the charges levelled against him by the trial Court. Hence, he is entitled for the full pay and other consequential benefits for the period during which he remained under suspension and for this purpose, he has filed this petition for treating the suspension period as on duty.

3. It is also asserted by the learned counsel for the petitioner that the petitioner was given a show cause notice dated 11.4.84 as to why the period of suspension should not be treated as such on temporary basis, as in both the cases, the conduct of the petitioner was found suspicious and that the petitioner was required to be imposed proposed penalty and to file a reply in that respect within ten days. After receipt of the said notice, the petitioner submitted his written report dated 5.5.84 and requested to take advice of his friend in the matter and prayed for extension of further 30 days, but he had not replied for anything nor he applied for further extension and the period applied for expired on 4.6.84. As no reply was received upto 6.6.84, the department presumed that the petitioner has nothing to say in respect of the show cause notice and the order dated 14.6.84 was passed by the Deputy Commissioner of Police treating the period of his suspension as such as

the offence shown at reference no. 8 is proved.

4. By means of an amendment, the petitioner has also prayed for quashing and setting aside the impugned show cause notice dated 11.4.84 and ex parte order dated 14.6.84.

5. The learned counsel for the petitioner states that he has received a copy of the affidavit-in-reply which was to be filed by the State, but original affidavit in reply is not on the record. From the copy of the affidavit, it appears that the petitioner was communicated with the show cause notice and he requested for time for taking legal advice from his friend. However, the petitioner neither applied for further time nor he sent any information to the department appointing or seeking any advice from any friend upto 6.6.84 and the department presumed that the petitioner had nothing to say in respect of the show cause notice and the impugned order has been accordingly passed.

6. The learned Assistant Government Pleader Mr.Gharania has submitted that the petitioner was given full opportunity to contest departmental proceedings in respect of his suspicious conduct and when the petitioner has not given any reply, the department had no option but to pass an appropriate order and the appropriate order was passed after considering the facts and circumstances on record. The petitioner was further given an opportunity to file an appeal before appropriate authority, but the petitioner has not availed of that opportunity even till the date of filing of this petition. Now, the prayer of the learned counsel for the petitioner is for filing an appeal before appropriate authority after a period of 17 years which should not be entertained.

7. I have carefully considered the submissions made on behalf of the parties. No doubt, the petitioner was acquitted from the charges levelled against him in both the cases. In ordinary course, the period of suspension should be treated as on duty, but the department is also at liberty to initiate departmental proceedings and in those departmental proceedings, after giving a reasonable opportunity of hearing, the delinquent can be held guilty and he could have been punished for that misconduct. In the present case, the department has initiated proceedings in respect thereof and show cause notice was issued to the petitioner as to why the suspension period should not be treated as such

by way of punishment. But the petitioner only applied for extension of time, to take legal advice of his friend. Neither he intimated the department about legal advice taken from his friend nor he appointed his friend for conducting the departmental proceedings within the time applied for extension. When the department did not receive any reply nor any application for further extension of time, the department had no option but to pass appropriate orders and accordingly, the Department has passed the impugned order treating the suspension period as such. On the face of the record, the department does not appear to have committed any error of law, but as in both the criminal cases, the petitioner was acquitted, the petitioner was also reinstated in service, on the basis of the acquittal given by the Court of law. Therefore, it would be just and proper for the department to consider whether period of suspension can be treated as such or not as the petitioner has been acquitted by the Court of law for the offences for which he was prosecuted and he had not filed an appeal against punishment awarded. For this purpose, the petitioner will have to make a representation before appropriate authority. Therefore, this petition is required to be dismissed with suitable observations.

8. Accordingly, the petition is dismissed with the observation that the petitioner is at liberty to make a representation to the appropriate authority and in case such a representation with a copy of this judgment is made before appropriate authority, within one month from the date of this judgment, the authority concerned will consider and decide the same in accordance with law and pass a speaking order within a period of three months from the date of receipt of such representation. Rule is made absolute accordingly with no order as to costs.

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